



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

May 21, 2021

Jennifer Everett
Rulemaking Coordinator, Coastal Resources Commission
Sent via email only to: jennifer.everett@ncdenr.gov

Re: Objection to Rules 15A NCAC 07J .0403, .0404, .0405, .0407, .0410, and 07K .0207

Dear Ms. Everett:

At its May 2021 meeting, the Rules Review Commission objected to the above-referenced rules in accordance with G.S. 150B-21.10.

The Commission objected to 15A NCAC 07J .0403, .0404, and .0405 for failure to comply with the APA. The rules contain changes that were not published in the Register, were not subject to public comment, and were not included in the changes approved by the Coastal Resources Commission at adoption. Further, the changes rise to the level of a “substantial change” as defined in G.S. 150B-21.2(g) because they address a subject matter not addressed in the proposed rule or produce an effect that could not reasonably have been expected. The APA has no procedure to add “amendments” to a rule after publication of notice in the Register and after the agency’s final action to adopt a rule. G.S. 150B-21.2 specifically states: “When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part.” In short, the Commission objected for failure to comply with the APA because the rules contain changes that are substantial, did not meet the notice and comment requirements of the permanent rulemaking process, and that were not adopted by the agency.

The Commission objected to 15A NCAC 07J .0405 on the additional ground of lack of statutory authority based upon the \$400 fee added post-publication to Paragraph (d). The agency provided a 2001 MOA between the Division of Coastal Management and the Department of Environment and Natural Resources, which references G.S. 143-215.3D, as authority for the fee. G.S. 143-215.3D is not listed in the History Note as statutory authority for the Rule. Additionally, the statute grants the authority to establish a fee to the Secretary, not the Coastal Resources Commission. There was no indication in the filing before RRC that the Secretary adopted this Rule. Therefore, the Commission objected for lack of statutory authority.

Julian Mann, III, Director
CHIEF ADMINISTRATIVE LAW JUDGE

Fred G. Morrison, Jr.
Senior Administrative Law Judge

Linda T. Worth
Deputy Director

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The Commission objected to 15A NCAC 07J .0407 for lack of clarity. Subparagraph (e)(2) says the Division may suspend or revoke the right to a project if “there has been a change of conditions in the area, or facts that would justify denial of a permit due to additional impacts to coastal resources...” It is unclear under what circumstances “facts” would justify permit denial or under what circumstances “impacts to coastal resources” would justify a permit denial.

The Commission objected to 15A NCAC 07J .0410 for lack of statutory authority. Commission staff could not locate, and the agency did not provide, authority for the agency, instead of a court, to order restoration of sites to pre-development conditions. 113A-126 allows court-ordered restoration.

The Commission objected to 15A NCAC 07K .0207 for ambiguity. It is unclear how the agency determines when alterations are “necessary” and “possible.” It is also unclear when a dune’s capacity as a protective barrier against flooding and erosion is “significantly” diminished.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission’s actions, please let me know.

Sincerely,

Ashley Snyder
Commission Counsel

Cc: Mike Lopazanski
Christine Goebel

Julian Mann, III, Director
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RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0403, .0404, and .0405

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
- ☒ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

These rules were published in the Register as readoptions "without substantive changes." The agency adopted and filed these rules for RRC review without any strikethroughs or underlines, meaning the agency formally met and adopted these rules with no changes to the text currently in the Code.

When the agency submitted revised rules following staff's technical change requests, the agency made changes that were not responsive to technical change requests. In response to staff's questions about these changes, the agency stated: "The CRC has been reviewing this rule and is proposing amendments." To be clear, these revised rules now contain changes that were not published in the Register, were not subject to public comment, and were not included in the changes approved by the Coastal Resources Commission at adoption.

The APA has no procedure to add "amendments" to a rule after publication of notice in the Register and after the agency's final action to adopt a rule.¹ G.S. 150B-21.2 specifically states: "When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part."

¹ G.S. 150B-21.10 allows technical changes in response to RRC technical change requests. G.S. 150B-21.5 exempts changes requested by the RRC from publication requirements unless RRC determines the changes are substantial.

Further, staff thinks these changes rise to the level of a “substantial change” as defined in G.S. 150B-21.2(g) because they address a subject matter not addressed in the proposed rule or produce an effect that could not reasonably have been expected. The issue here is that the substantial changes were also not adopted by the Coastal Resources Commission following the close of the comment period. Specifically, staff believes the following proposed changes are substantial.

15A NCAC 07J .0403:

- Paragraph (a) sets new permit expiration timelines.
- The deletion of Paragraph (e) removes an exception allowing development after permit expiration in certain circumstances.

15A NCAC 07J .0404:

- Paragraph (b) adds a new exception allowing permits for multi-phased beach nourishment to be granted ten-year extensions.
- Paragraph (b) changes permit renewals for maintenance and repairs at from 10 years to five years.
- Paragraph (b) adds a description of “substantial development” applicable to elevated structures in Ocean Hazard Areas.
- Paragraph (d) changes comment period from three weeks to 30 days.
- Paragraph (f), governing modifications to extended permits, has been deleted.

15 NCAC 07J .0405:

- Paragraph (a) makes changes related to minor permit modification requests.
- The deletion of Paragraph (c) which governed minor permit modifications for projects that benefit private waterfront property owners.
- In (c), a “consolidated” fee of \$400 with the Division of Water Resources.
- (c)(1), setting size requirements for modifications, has been deleted.

Staff recommends objection to the above-referenced rules for failure to comply with the APA because they contain changes, some of which are substantial, that did not meet the notice and comment requirements of the permanent rulemaking process and that were not adopted by the agency.

§ 150B-2. Definitions.

As used in this Chapter,

- (1b) "Adopt" means to take final action to create, amend, or repeal a rule.

§ 150B-21.2. Procedure for adopting a permanent rule.

(a) Steps. - Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:

- (1) Publish a notice of text in the North Carolina Register.
- (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.
- (3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
- (4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
- (5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. - A notice of the proposed text of a rule must include all of the following:

- (1) The text of the proposed rule, unless the rule is a readoption without substantive changes to the existing rule proposed in accordance with G.S. 150B-21.3A.
- (2) A short explanation of the reason for the proposed rule.
- (2a) A link to the agency's Web site containing the information required by G.S. 150B-19.1(c).
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person within the agency to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
- (9) Repealed by Session Laws 2013-143, s. 1, effective June 19, 2013.

(d) Mailing List. - An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. - An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public

hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published. If notice of a public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency shall publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

(f) Comments. - An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and any fiscal note that has been prepared in connection with the proposed rule for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

(g) Adoption. - An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency shall review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

- (1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.
- (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
- (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

(h) Explanation. - An agency must issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency must issue the explanation within 15 days after receipt of the request for an explanation.

(i) Record. - An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, any fiscal note that has been prepared for the rule, and any written explanation made by the agency for adopting the rule.

§ 150B-21.10. Commission action on permanent rule.

At the first meeting at which a permanent rule is before the Commission for review, the Commission must take one of the following actions:

- (1) Approve the rule, if the Commission determines that the rule meets the standards for review.
- (2) Object to the rule, if the Commission determines that the rule does not meet the standards for review.
- (3) Extend the period for reviewing the rule, if the Commission determines it needs additional information on the rule to be able to decide whether the rule meets the standards for review.

In reviewing a new rule or an amendment to an existing rule, the Commission may request an agency to make technical changes to the rule and may condition its approval of the rule on the agency's making the requested technical changes.

§ 150B-21.5. Circumstances when notice and rule-making hearing not required; circumstances when submission to the Commission not required.

(a) Amendment. - An agency is not required to publish a notice of text in the North Carolina Register, hold a public hearing, or submit the amended rule to the Commission for review when it proposes to amend a rule to do one of the following:

- (1) Reletter or renumber the rule or subparts of the rule.
- (2) Substitute one name for another when an organization or position is renamed.
- (3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
- (4) Change information that is readily available to the public, such as an address, email address, a telephone number, or a Web site.
- (5) Correct a typographical error.
- (6) Repealed by Session Laws 2019-140, s. 1(a), effective July 19, 2019.

(a1) Response to Commission. - An agency is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to change the rule in response to a request or an objection by the Commission, unless the Commission determines that the change is substantial.

1 15A NCAC 07J .0403 is readopted as published in 34:22 NCR 2104 as follows:

2
3 **15A NCAC 07J .0403 DEVELOPMENT PERIOD/COMMENCEMENT/CONTINUATION**

4 (a) New dredge and fill permits and CAMA ~~permits, excepting~~ Major permits shall expire five years from the date of
5 permit issuance, with the exception of multi-phased beach nourishment projects, which shall expire ten years from the
6 date of permit issuance. Minor permits, except those authorizing beach bulldozing ~~when authorized through issuance~~
7 ~~of a CAMA minor permit,~~ shall expire on December 31 of the third year following the year of permit issuance.

8 (b) ~~Pursuant to Subparagraph (a) of this Rule, a CAMA minor permit~~ permits authorizing beach bulldozing shall
9 expire 30 days from the date of permit issuance. ~~issuance when issued to a property owner(s).~~ Following permit
10 expiration, the ~~applicant~~ permit holder ~~is entitled to~~ may request an extension in accordance with Rule .0404(a) of this
11 Section.

12 (c) Development After Permit Expiration. ~~Expiration Illegal.~~ Any development ~~done~~ undertaken after permit
13 expiration shall be considered unpermitted and shall constitute a violation of G.S. 113A-118 or G.S. 113-229. Any
14 development ~~to be done~~ undertaken after permit expiration shall require ~~either a new permit, permit, or renewal of the~~
15 original permit according to 15A NCAC 7J .0404 with the exception of Paragraph (e) of this Rule.

16 (d) Commencement of Development in Ocean Hazard AEC. No development shall begin until the oceanfront setback
17 requirement can be ~~established.~~ met in accordance with 15A NCAC 07H .0306. When the ~~possessor of a permit holder~~
18 ~~or a ruling of an individual receiving an exception to the permit requirement~~ is ready to begin ~~construction, he~~
19 development, they shall arrange ~~a~~ an on-site meeting with the ~~appropriate permitting authority at the site~~ Division of
20 Coastal Management or Local Permitting Officer to determine the oceanfront setback. This setback determination
21 shall replace the one ~~done~~ completed at the time the permit was processed and approved and ~~construction must~~
22 development shall begin within a ~~period of~~ 60 days from the date of that meeting. In the case of a ~~major~~ shoreline
23 change that alters the location of the permitted development, ~~within that period~~ a new setback determination will may
24 be required ~~required, before construction begins.~~ To determine if a new setback is required, additional coordination
25 with the Division of Coastal Management or Local Permitting Officer shall be required. ~~Upon completion of the~~
26 ~~measurement, the permitting authority will issue a written statement to the permittee certifying the same.~~

27 (e) Continuation of Development in the Ocean Hazard AEC. Once development has begun under proper authorization
28 development in the Ocean Hazard AEC may continue beyond the authorized development period if, in the opinion of
29 the ~~permitting authority,~~ substantial progress has been made and is continuing according to customary and usual
30 building standards and schedules. ~~In most cases, substantial progress begins with the placement of foundation pilings,~~
31 ~~and proof of the local building inspector's certification that the installed pilings have passed a floor and foundation~~
32 ~~inspection.~~

33 (f)(c) Any permit that has been ~~suspended pursuant to G.S. 113A-121.1 as a result of a contested case petition or by~~
34 ~~order of superior court for a period longer than six months~~ stayed as a result of litigation shall be extended at the
35 ~~applicant's~~ permit holder's written request for a period equivalent to the period of permit suspension, but not to exceed
36 the development period authorized under Paragraph (a) of this Rule.

1 ~~(g) An applicant may voluntarily suspend development under an active permit that is the subject of judicial review~~
2 ~~by filing a written notice with the Department once the review has started. An applicant shall obtain an extension of~~
3 ~~said permit if the permitting authority finds:~~

4 ~~(1) That the applicant notified the permitting authority in writing of the voluntary suspension;~~

5 ~~(2) The period during which the permit had been subject to judicial review is greater than six months;~~

6 ~~(3) The applicant filed a written request for an extension of the development period once the judicial~~
7 ~~review had been completed; and~~

8 ~~(4) The applicant undertook no development after filing the notice of suspension. The period of permit~~
9 ~~extension shall be equivalent to the length of the judicial review proceeding, but not to exceed the~~
10 ~~development period authorized under Paragraph (a) of this Rule.~~

11
12 *History Note: Authority G.S. 113A-118; 113A-124(c)(8)*

13 *Eff. March 15, 1978;*

14 *Amended Eff. August 1, 2002; April 1, 1995; July 1, 1989; March 1, 1985; November 1, 1984;*

15 *Readopted Eff. April 1, 2021.*

1 15A NCAC 07J .0404 is readopted with changes as published in 34:22 NCR 2104 as follows:

2
3 **15A NCAC 07J .0404 DEVELOPMENT PERIOD EXTENSION**

4 (a) For CAMA minor permits authorizing beach bulldozing, the applicant **permit holder** ~~is entitled to~~ may request a
5 one-time ~~30-day~~ 30-day permit extension. No additional extensions shall be granted after the ~~30-day~~ 30-day extension
6 has expired. Notwithstanding this Paragraph, the ~~applicant~~ permit holder is eligible to apply for another minor permit
7 authorizing beach bulldozing following expiration of the ~~30-days~~ 30-day permit extension.

8 ~~(b) Where no development has been initiated during the development period, the permitting authority shall extend~~
9 ~~the authorized development period for no more than two years upon receipt of a signed and dated request from the~~
10 ~~applicant containing the following:~~

11 (1) ~~_____ a statement of the intention of the applicant to complete the work within a reasonable time;~~

12 (2) ~~_____ a statement of the reasons why the project will not be completed before the expiration of the current~~
13 ~~permit;~~

14 (3) ~~_____ a statement that there has been no change of plans since the issuance of the original permit other~~
15 ~~than changes that would have the effect of reducing the scope of the project, or, project or previously~~
16 ~~approved permit modifications;~~

17 (4) ~~_____ notice of any change in ownership of the property to be developed and a request for transfer of the~~
18 ~~permit permit, if appropriate; and~~

19 (5) ~~_____ a statement that the project is in compliance with all conditions of the current permit.~~

20 ~~Where substantial development, either within or outside the AEC, has begun and is continuing on a permitted project,~~
21 ~~the permitting authority shall grant as many two year extensions as necessary to complete the initial development. For~~
22 ~~the purpose of this Rule, substantial development “substantial development” shall be deemed to have occurred on a~~
23 ~~project if the permittee can show that development has progressed beyond basic site preparation, such as land clearing~~
24 ~~and grading, and construction has begun and is continuing on the primary structure or structures authorized under the~~
25 ~~permit. For purposes of residential subdivision, installation of subdivision roads consistent with an approved~~
26 ~~subdivision plat shall constitute substantial development. Renewals for maintenance and repairs of previously~~
27 ~~approved projects may be granted for periods not to exceed 10 years.~~

28 ~~(b) All other CAMA permits may be extended where substantial development, either within or outside the AEC, has~~
29 ~~begun and is continuing. The permitting authority shall grant as many two-year extensions as necessary to complete~~
30 ~~the initial development, with the exception that multi-phased beach nourishment projects may be granted ten-year~~
31 ~~extensions to allow for continuing project implementation. Renewals for maintenance of previously approved~~
32 ~~dredging projects may be granted for periods not to exceed five years. For the purpose of this Rule, substantial~~
33 ~~development shall be deemed to have occurred on a project if the permit holder can show that development has~~
34 ~~progressed beyond basic site preparation, such as land clearing and grading, and construction has begun and is~~
35 ~~continuing on the primary structure or structures authorized under the permit. For elevated structures in Ocean Hazard~~
36 ~~Areas, substantial development begins with the placement of foundation pilings, and proof of the local building~~
37 ~~inspector’s certification that the installed pilings have passed a floor and foundation inspection. For residential~~

1 subdivisions, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial
2 development.

3 (c) To request an extension pursuant to Paragraphs (a) and (b) of this Rule, the permit holder shall submit a signed
4 and dated request containing the following:

5 (1) a statement of the completed and remaining work;

6 (2) a statement that there has been no change of plans since the issuance of the original permit other than
7 changes that would have the effect of reducing the scope of the project or previously approved permit modifications;

8 (3) notice of any change in ownership of the property to be developed and a request for transfer of the
9 permit, if appropriate; and

10 (4) a statement that the project is in compliance with all conditions of the current permit.

11 ~~(e)(d)~~ When an For extension request requests where substantial development has not met occurred in accordance
12 with the criteria of Paragraph (b) of this Rule, the Department may circulate the request to the commenting state State
13 agencies pursuant to 15A NCAC 07J .0207 along with a copy of the original permit application. Commenting agencies
14 will be given three weeks 30 days in which to comment on the extension request. Upon the expiration of the
15 commenting period period, the Department will notify the applicant permit holder promptly of its actions on the
16 extension request.

17 ~~(d)(c)~~ Notwithstanding Paragraphs (b) and (e)(d) of this Rule, an extension request may be denied on making findings
18 as required in either G.S. 113A-120 or G.S. 113-229(e). Changes in circumstances or in development standards shall
19 be considered and applied to the maximum extent practical by the permitting authority in making a decision on an
20 extension request.

21 ~~(e)(f)~~ The applicant for a major development extension request must shall submit, with the request, a check or money
22 order payable to the Department in the sum of one hundred dollars (\$100.00).

23 ~~(f) Modifications to extended permits may be considered pursuant to 15A NCAC 07J .0405.~~

24
25 *History Note: Authority G.S. 113A-119; 113A-119.1; 113A-124(c)(8);*

26 *Eff. March 15, 1978;*

27 *Amended Eff. August 1, 2002; August 1, 2000; April 1, 1995; March 1, 1991; March 1, 1985;*

28 *November 1, 1984;*

29 *Readopted Eff. April 1, 2021.*

RRC STAFF OPINION

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AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0405

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection to the \$400 fee added post-publication to Paragraph (d) for lack of statutory authority. The agency provided a 2001 MOA between the Division of Coastal Management and the Department of Environment and Natural Resources in support of the fee. The MOA references the following statute:

§ 143-215.3D. Fee schedule for water quality permits.

- (e) Other fees under this Article. –
 - (7) Limit Water Quality Certification Fee Required for CAMA Permit. - An applicant for a permit under Article 7 of Chapter 113A of the General Statutes for which a water quality certification is required **shall pay a fee established by the Secretary.** The Secretary shall not establish a fee that exceeds the greater of the fee for a permit under Article 7 of Chapter 113A of the General Statutes or the fee for a water quality certification under subdivision (3) or (4) of this subsection.

G.S. 143-215.3D is not listed in the History Note as statutory authority for the Rule. Additionally, the statute grants the authority to establish a fee to the Secretary, not the Coastal Resources Commission. There is no indication in the filing before RRC that the Secretary adopted this Rule.

1 15A NCAC 07J .0405 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0405 PERMIT MODIFICATION**

4 (a) ~~An applicant~~ A permit holder may apply for a major or minor modification ~~modify his permitted~~ of an active
5 major development permit and/or dredge and fill permit. ~~project only after approval by the Department.~~ In order to
6 modify an active a permitted project major development or dredge and fill permit the permit holder applicant must
7 shall make a written request to the ~~Department~~ Division of Coastal Management showing ~~in detail~~ the proposed
8 modifications. ~~Minor modifications may be shown on the existing approved application and plat.~~ Modification
9 requests ~~which, in the opinion of the Department,~~ that, based on the Division's assessment of the potential impacts to
10 coastal resources or use conflicts are considered major will shall require a new ~~application.~~ application and shall
11 follow the major permit procedures defined in NCAC 07J .0200. ~~Modification requests are subject to the same~~
12 ~~processing procedure applicable to original permit applications.~~ Modification requests that, based on the Division's
13 assessment of potential impacts on coastal resources or use conflicts, are considered minor shall require a permit
14 drawing and project narrative and shall ~~A permit need not~~ be circulated to ~~all~~ those agencies commenting on the
15 original application and adjacent riparian property owners where, based on the Division's assessment of the impacts
16 of the proposed changes, the potential exists for additional impacts on coastal resources or use conflicts. ~~if the~~
17 ~~Commission determines that the modification is so minor that circulation would serve no purpose.~~

18 (b) Modifications to a permitted project ~~which~~ that are imposed or ~~made at the request of~~ or requested by the U.S.
19 Army Corps of Engineers or other federal agencies ~~must~~ shall be approved by the ~~Department~~ Division of Coastal
20 Management under provisions of Paragraph (a) of this Rule. ~~Rule dealing with permit modification procedures.~~

21 (c) ~~Modifications of projects for the benefit of private waterfront property owners which~~ that meet the following
22 criteria ~~shall be considered minor modifications and shall not require a new permit application, but must~~ shall be
23 approved under the provisions of Paragraph (a) of this Rule:

24 (1) ~~for bulkheads:~~

25 (A) ~~Bulkhead bulkhead must shall~~ be positioned so as not to extend more than an average
26 distance of two feet waterward of the mean high water contour; ~~contour and in no place~~
27 ~~shall the bulkhead be more than five feet waterward of the mean high water contour; and~~

28 (B) ~~All all~~ backfill must shall come from an upland source; and

29 (C) ~~No no~~ marsh area may be excavated or filled; and

30 (D) ~~Work work~~ must shall be undertaken because of the necessity to prevent significant loss of
31 private residential property due to erosion; and

32 (E) ~~The the~~ bulkhead must shall be constructed prior to any backfilling activities; and

33 (F) ~~The the~~ bulkhead must shall be constructed so as to prevent seepages of backfill materials
34 through the bulkhead; and

35 (G) ~~The the~~ bulkhead may not be constructed in the Ocean Hazard AEC;

36 (2) ~~for piers, docks and boathouses:~~

(A) ~~The the modification or addition may shall~~ not be within 150 feet of the edge of a federally maintained channel; and

(B) ~~The the structure, as modified, must shall~~ be 200 feet or less in total length offshore; and

(C) ~~The the structure, as modified, must shall~~ not extend past the four feet mean low water contour line (four feet depth at mean low water) of the waterbody; and

(D) ~~The the project as modified, must shall~~ not exceed six feet in width; and

(E) ~~The the modification or addition must shall~~ not include an enclosed structure; and

(F) ~~The the project shall continue to be used for private, residential purposes;~~

(3) ~~for boatramps:~~

(A) ~~The the project, as modified, would shall~~ not exceed 10 feet in width and 20 feet offshore; and

(B) ~~The the project shall continue to be used for private, residential purposes.~~

(d)(c) ~~An applicant A permit holder may modify his an active permitted minor development project permit only after approval by the local permit-letting authority, authority, or the Division of Coastal Management if the local government does not have a delegated minor permit program pursuant to G.S. 113A-117 and 15A NCAC 07I. In order to modify a permitted project project, the applicant must permit holder shall make a written request to the local minor permit-letting authority or the Division of Coastal Management showing in detail the proposed modifications. The request shall be reviewed approved in consultation with the appropriate Division of Coastal Management field consultant and granted if all of the following provisions are met:~~

(1) ~~The size of the project is expanded less than 20 percent of the size of the originally permitted project; and~~

(2)(1) ~~A a signed, written statement is obtained from all adjacent riparian property owners indicating they have no objections to the proposed modifications; and~~

(3)(2) ~~The the proposed modifications are consistent with all local, state, State, and federal standards and local Land Use Plans in effect at the time of the modification requests; and~~

(4)(3) ~~The the type or nature of development is not changed.~~

Failure to meet ~~these the provisions of this Paragraph~~ shall necessitate the submission of a new permit application.

(e)(d) ~~The applicant for a minor modification or a major permit shall submit with the request a check or money order payable to the Department of Environmental Quality (\$100). The applicant for a major permit modification of a major permit must shall submit with the request a check or money order payable to the Department in the sum of one hundred dollars (\$100.00) for a minor modification and two hundred fifty dollars (\$250.00) or (\$400) in cases where fees are consolidated with the N.C. Division of Water Resources. for a major modification.~~

History Note: Authority G.S. 113A-119; 113A-119.1; 113A-124(e)(5); 113-229; 113A-124(c)(8); Eff. March 15, 1978; Amended Eff. August 1, 2000; March 1, 1991; August 1, 1986; November 1, 1984; Readopted Eff. April 1, 2021.

1 15A NCAC 07J .0406 is readopted with changes as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0406 PERMIT ISSUANCE AND TRANSFER**

4 (a) Upon the approval of an application and the issuance of the permit, the permit shall be delivered to the applicant,
5 or to any person designated by the applicant to receive the permit, by hand, first class mail or any appropriate means.

6 (b) Anyone holding a permit ~~may~~ shall not assign, transfer, sell, or otherwise dispose of a permit to a third party,
7 unless approval is granted by the Director of the Division of Coastal Management pursuant to Paragraph (c).

8 (c) A permit may be transferred to a new party at the discretion of the Director of the Division of Coastal Management
9 upon finding each of the following:

- 10 (1) a written request from the new owner or developer of the involved properties;
11 (2) a deed, a sale, lease, or option to the proposed new party showing the proposed new party as having
12 the sole legal right to develop the project;
13 (3) that the applicant transferee will use the permit for the purposes for which it was issued;
14 (4) no substantial change in conditions, circumstances, or facts affecting the project;
15 (5) no substantial change or modification of the project as proposed in the original application.

16 (d) A person aggrieved by a decision of the Director as to the transfer of a permit may request a declaratory ruling by
17 the Coastal Resources Commission as per 15A NCAC ~~7J.0600, et. seq.~~ 07J .0600.

18 (e) The applicant for a permit transfer ~~must~~ shall submit with the request a check or money order payable to the
19 Department in the sum of one hundred dollars (\$100.00).

20
21 *History Note: Authority G.S. 113A-118(c); 113A-119(a); 113A-119.1; 113A-124(c)(8);*

22 *Eff. March 15, 1978;*

23 *Amended Eff. August 1, 2000; March 1, 1991; March 1, 1990; October 15, 1981;*

24 *Readopted Eff. April 1, 2021.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0407

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objection for lack of clarity. Subparagraph (e)(2) says the Division may suspend or revoke the right to a project if "there has been a change of conditions in the area, or facts that would justify denial of a permit due to additional impacts to coastal resources..." Staff is not sure under what circumstances "facts" would justify permit denial or under what circumstances "impacts to coastal resources" would justify a permit denial.

1 15A NCAC 07J .0407 is readopted with changes as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0407 PROJECT MAINTENANCE: MAJOR DEVELOPMENT/DREDGE AND FILL**

4 (a) No project previously requiring a major development or dredge and fill permit shall be maintained after the expiration
5 of the authorized development period without approval from the ~~Department~~ Division of Coastal Management. Permits
6 may contain provisions ~~which that~~ allow the applicant to maintain the project after its completion. Persons wishing to
7 maintain a project beyond the development period and whose permit contains no maintenance provision shall apply for a
8 maintenance permit. This Rule does not apply to maintenance required by rule or by permit condition.

9 (b) Maintenance Request. Persons desiring to initiate maintenance work on a project pursuant to the maintenance provisions
10 of an existing permit shall file a request ~~at least~~ two weeks prior to the initiation of maintenance work with:

11 Department of ~~Environment and Natural Resources~~ Environmental Quality
12 Division of Coastal Management
13 400 Commerce Avenue
14 Morehead City, NC 28557

15 (c) Such requests shall include:

- 16 (1) the name and address of the permittee;
17 (2) the number of the original permit;
18 (3) a description of proposed changes;
19 (4) in the case of a dredge and fill maintenance request, a statement that no dimensional changes are
20 proposed;
21 (5) a copy of the original permit plat with cross-hatching indicating the area to be maintained, any area to be
22 used as spoil, and the estimated amount of material to be removed; and
23 (6) the date of map revision and the applicant's signature shown anew on the original plat.

24 (d) Conditions for Maintenance. All work undertaken pursuant to the maintenance provisions of a permit shall comply with
25 the following conditions:

- 26 (1) Maintenance work under a major development permit shall be limited to activities which are within the
27 exemptions set forth by the Commission.
28 (2) Maintenance under a dredge and fill permit shall be limited to excavation and filling which is necessary
29 to maintain the project dimensions as found in the original permit.
30 (3) Maintenance work is subject to all the conditions included in the original permit.
31 (4) Spoil disposal shall be in the same locations as authorized in the original permit, provided that the person
32 requesting the authority to maintain a project may request a different spoil disposal site if he or she first
33 serves a copy of the maintenance request on all adjoining landowners.
34 (5) The maintenance work is subject to any conditions determined by the Department to be necessary to
35 protect the public interest with respect to the factors enumerated in G.S. 113A-120 or G.S. 113-229.

36 (e) The ~~Department~~ Division of Coastal Management may suspend or revoke the right to maintain a project in whole or in
37 part upon a finding:

- 38 (1) that the project area has been put to a different use from that indicated in the original permit application;

39 ~~or~~

1 (2) that there has been a change of conditions in the area, ~~newly found facts or facts, or newly reached~~
2 ~~opinions which that~~ would justify denial of a ~~permit;~~ permit due to additional impacts to coastal resources;
3 or

4 (3) that there has been a violation of any of the terms or conditions of the original permit.

5 (f) Grant or Denial of Maintenance Request

6 (1) Upon receipt of a complete maintenance request the ~~Department~~ Division of Coastal Management shall
7 determine if there are grounds for revocation or suspension of the applicant's right to ~~maintain.~~ maintain
8 ~~based on the criteria in (e) of this Paragraph.~~ If there are grounds for revocation or suspension the
9 applicant shall be notified of the suspension or revocation by ~~registered letter~~ certified mail, return receipt
10 requested setting forth the findings on which the revocation or suspension is based.

11 (2) If the ~~Department~~ Division of Coastal Management determines that the right to maintain should not be
12 revoked or ~~suspended,~~ based on the criteria in (e) of this Paragraph, a letter shall be issued which shall
13 authorize the applicant to perform maintenance work. The letter shall set forth the terms and conditions
14 under which the maintenance work is authorized.

15 (3) If the maintenance request discloses changes in the dimensions of the original project, the ~~Department~~
16 ~~Division of Coastal Management~~ shall notify the applicant that a permit modification or renewal shall be
17 required pursuant to the procedure set out in 15A NCAC 07J .0404 and .0405.

18 (4) Appeal of ~~department~~ ~~Department~~ the Division of Coastal Management action under this Section shall
19 be in accordance with 15A NCAC 07J .0302.

20
21 *History Note: Authority G.S. 113A-103(5)c; 113A-120(b); 113A-124(c)(8);*

22 *Eff. March 15, 1978;*

23 *Amended Eff. June 1, 2005; December 1, 1991; May 1, 1990; March 1, 1985; November 1, 1984;*

24 *Readopted Eff. April 1, 2021.*

1 15A NCAC 07J .0409 is readopted with changes as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0409 CIVIL PENALTIES**

4 (a) Purpose and Scope. This Rule provides the procedures and standards governing the assessment, remission,
5 ~~settlement~~ settlement, and appeal of civil penalties assessed by the Coastal Resources Commission and the Director
6 pursuant to G.S. 113A-126(d).

7 (b) Definitions. The terms used in this Rule shall be as defined in G.S. 113A-103 and as follows:

8 (1) "Act" means the Coastal Area Management Act of 1974, G.S. 113A-100 through ~~134, plus~~
9 ~~amendments.~~ 134.

10 (2) "Delegate" means the Director or other employees of the Division of Coastal Management, or local
11 permit officers to whom the Commission has delegated authority to act pursuant to this Rule.

12 (3) "Director" means the Director, Division of Coastal Management.

13 (4) "Respondent" means the person to whom a notice of violation has been issued or against whom a
14 penalty has been assessed.

15 (c) Investigative costs. In addition to any civil penalty, the costs incurred by the Division for any investigation,
16 inspection, and monitoring associated with assessment the civil penalty may be assessed pursuant to G.S. 113A-
17 126(d)(4a). The amount of investigative costs assessed shall be based upon factors including the amount of staff time
18 required for site visits, investigation, enforcement action, interagency coordination, and for monitoring restoration of
19 the site.

20 (d) Notice of Violation. The Commission ~~hereby~~ authorizes employees of the Division of Coastal Management to
21 issue in the name of the Commission notices of violation to any person engaged in an activity which constitutes a
22 violation for which a civil penalty may be assessed.

23 (e) Procedures for Notification of Civil Penalty Assessment.

24 (1) The Commission ~~hereby~~ delegates to the Director the authority to assess civil penalties according
25 to the procedures set forth in Paragraph (g) of this Rule.

26 (2) If restoration of affected resources is not required, the Director shall issue a civil penalty assessment
27 within 90 days from the date of the Notice of Violation. If restoration of affected resources is
28 required, the Director may issue a civil penalty assessment within 60 days after the Division
29 determines that restoration of the adversely impacted resources is complete or once the date
30 restoration was required has passed without having been completed.

31 (f) Procedures for Determining the Amount of Civil Penalty Assessment.

32 (1) Pursuant to G.S. 113A-126(d)(1), penalties for major development violations, including violations
33 of permit conditions, shall be assessed as follows:

34 (A) Major development that could have been permitted under the Commission's rules at the
35 time the notice of violation is issued shall be assessed a penalty equal to two times the
36 relevant CAMA permit application fee as set forth in Rule .0204 of this Subchapter, plus
37 investigative costs.

(B) Major development that could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee, plus a penalty pursuant to Schedule A of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule A of this Rule, the penalties for each affected AEC shall be ~~combined~~, combined not to exceed \$10,000 per 113A-126(d)(1). Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

SCHEDULE A

Major Development Violations

Penalties for Major Development Permit Violations By Size of Violation (sq. ft.)

Area of Environmental Concern Affected	≤ 100	101-500	501-1,000	1001-3000	3001-5000	5001-8000	8001-11,000	11,001-15,000	15,001-20,000	20,001-25,000	>25,000
Estuarine Waters or Public Trust Areas (1)	\$250	\$375	\$500	\$1,500	\$2,000	\$3,500	\$5,000	\$7,000	\$9,000	\$10,000	\$10,000
Primary Nursery Areas	\$100	\$225	\$350	\$850	\$1,350	\$2,850	\$4,350	\$3,000	\$1,000	n/a	n/a
Mudflats and Shell Bottom	\$100	\$225	\$350	\$850	\$1,350	\$2,850	\$4,350	\$3,000	\$1,000	n/a	n/a
Submerged Aquatic Vegetation	\$100	\$225	\$350	\$850	\$1,350	\$2,850	\$4,350	\$3,000	\$1,000	n/a	n/a
Coastal Wetlands	\$250	\$375	\$500	\$1,500	\$2,000	\$3,500	\$5,000	\$7,000	\$9,000	\$10,000	\$10,000
Coastal Shorelines	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000
Wetlands (2)	\$100	\$200	\$300	\$700	\$1,100	\$2,300	\$3,500	\$4,750	\$2,750	\$750	n/a
ORW- Adjacent Areas	\$100	\$200	\$300	\$700	\$1,100	\$2,300	\$3,500	\$4,750	\$2,750	\$750	n/a

Ocean Hazard System (3)(4)	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000
Primary or Frontal Dune	\$100	\$200	\$300	\$700	\$1,100	\$2,300	\$3,500	\$4,750	\$2,750	\$750	n/a
Public Water Supplies (5)	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000
Natural and Cultural Resource Areas (6)	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000

- 1 (1) Includes the Atlantic Ocean from the normal high water mark to three miles offshore.
- 2 (2) Wetlands that are jurisdictional by the Federal Clean Water Act.
- 3 (3) If the AEC physically overlaps another AEC, use the greater penalty schedule.
- 4 (4) Includes the Ocean Erodible, Inlet Hazard Area, and Unvegetated Beach Area.
- 5 (5) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.
- 6 (6) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique
- 7 Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal
- 8 Historical Architectural Resources.
- 9 (C) Assessments for violations by public ~~agencies (i.e. agencies, i.e. towns, counties counties,~~
- 10 ~~and state agencies)~~ State agencies shall be determined in accordance with Parts (1)(A) and
- 11 (B) of this Paragraph.
- 12 (D) Willful and intentional violations. The penalty assessed in accordance with Parts (1)(A)
- 13 and (B) of this Paragraph. shall be doubled for willful and intentional violations except that
- 14 the doubled penalties assessed under this Subparagraph shall not exceed ten thousand
- 15 dollars (\$10,000) or be less than two thousand dollars (\$2,000) for each separate violation.
- 16 For the purposes of G.S. 113A-126(d)(2), the following actions shall be considered willful
- 17 and intentional:
- 18 (i) the person received written instructions from one of the Commission's delegates
- 19 that a permit would be required for the development and subsequently undertook
- 20 development without a permit;
- 21 (ii) the person received written instructions from one of the Commission's delegates
- 22 that the proposed development was not permissible under the Commission's rules,
- 23 or received denial of a permit application for the proposed activity, and
- 24 subsequently undertook the development without a permit;
- 25 (iii) the person committed previous violations of the Commission's rules; or
- 26 (iv) the person refused or failed to restore a damaged area as ordered by one of the
- 27 Commission's delegates.
- 28 (E) Assessments against contractors. Any contractor, subcontractor, or person functioning as a
- 29 contractor shall be subject to a notice of violation and assessment of a civil penalty in

accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (D) of this Subparagraph and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.

(F) Assessments for Continuing violations.

(i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease or restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.

(ii) Refusal or failure to restore a damaged area as ~~as~~ directed in the restoration order shall be considered a continuing violation and shall be assessed an additional penalty. When resources continue to be affected by the violation, the amount of the penalty shall be determined according to Part (B) of this Subparagraph. The continuing penalty period shall be calculated from the date specified in the restoration order which accompanies the notice of violation for the unauthorized activity to cease or restoration to be completed and run until:

- (I) the Division determines that the terms of the restoration order are satisfied;
- (II) the respondent enters into negotiations with the Division; or
- (III) the respondent contests the Division's order in a judicial proceeding.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the Division.

(2) Pursuant to G.S. ~~113A-126(d)(2)~~, 113A-126(d)(1), penalties for minor development violations, including violations of permit conditions, shall be assessed as follows:

(A) Minor development that could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee, plus investigative costs.

(B) Minor development that could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee as set forth in Rule .0204 of this Subchapter, plus a penalty pursuant to Schedule B of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule B of this Rule, the penalties for each affected AEC shall be combined. Any structure or part of a structure that is constructed in violation of existing Commission rules shall be

removed or modified as necessary to bring the structure into compliance with the Commission's rules.

SCHEDULE B

Penalties for Minor Development Permit Violations By Size of Violation

Size of Violation (sq. ft.)

Area of Environmental Concern Affected	≤ 100	101-500	501-1,000	1001-3000	3001-5000	5001-8000	8001-11,000	11,001-15,000	15,001-20,000	20,001-25,000	>25,000
Coastal Shorelines	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000
ORW- Adjacent Areas	\$125	\$150	\$175	\$225	\$275	\$350	\$425	\$375	\$250	\$125	n/a
Ocean Hazard System (1)(2)	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000
Primary or Frontal Dune	\$125	\$150	\$175	\$225	\$275	\$350	\$425	\$375	\$250	\$125	n/a
Public Water Supplies (3)	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000
Natural and Cultural Resource Areas (4)	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000

(1) Includes the Ocean Erodible, Inlet Hazard Area, and Unvegetated Beach Area.

(2) If the AEC physically overlaps another AEC, use the greater penalty schedule.

(3) Includes Small Surface Water Supply, ~~Supply Watershed Watersheds~~, defined in 15A NCAC 07H .0404 and Public Water Supply Well Fields, ~~Fields~~, defined in 15A NCAC 07H .0406.

(4) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural ~~Resources~~, Resources as defined in 15A NCAC 07H .0505, .0506, .0509, and .0510.

(C) Violations by public agencies (~~e.g., e.g., towns, counties~~ counties, and ~~state agencies~~) State agencies, shall be handled by the local permit officer or one of the Commission's delegates within their respective jurisdictions except that in no case shall a local permit officer handle a violation committed by the local government they represent. Penalties shall be assessed in accordance with Parts (A) and (B) of this Subparagraph.

(D) Willful and intentional violations. The penalty assessed under Parts (A) and (B) of this Subparagraph shall be doubled for willful and intentional violations except that the doubled

penalties assessed under this Subparagraph shall not exceed one thousand dollars (\$1,000.00) for each separate violation. For the purposes of G.S. 113A-126(d)(2), the following actions shall be considered willful and intentional:

- (i) the person received written instructions from the local permit officer or one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit;
- (ii) the person received written instructions from the local permit officer or one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit;
- (iii) the person committed previous violations of the Commission's rules; or
- (iv) the person refused or failed to restore a damaged area as ordered by the local permit officer or one of the Commission's delegates.

(E) Assessments against contractors. Any contractor, subcontractor, or person functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (D) of this Subparagraph and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.

(F) Assessments of Continuing violations.

- (i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.
- (ii) Refusal or failure to restore a damaged area as directed in the restoration order shall be considered a continuing violation and shall be assessed an additional penalty. The amount of the penalty shall be determined according to Part (B) of this Subparagraph. The continuing penalty period shall be calculated from the date specified in the restoration order which accompanies the notice of violation for the unauthorized activity to cease and restoration to be completed and run until:
 - (I) the Division determines that the terms of the restoration order are satisfied;
 - (II) the respondent enters into negotiations with the local permit officer or the Division; or
 - (III) the respondent contests the local permit officer's or the Division's order in a judicial proceeding.

1 The continuing penalty period shall resume if the respondent terminates negotiations
2 without reaching an agreement with the local permit officer or the Division, fails to comply
3 with court ordered restoration, or fails to meet a deadline for restoration that was negotiated
4 with the local permit officer or the Division.

5 (g) Reports to the Commission. Action taken by the Director shall be reported to the Commission at the next regularly
6 scheduled Commission meeting. Such reports shall include information on the following:

- 7 (1) respondent(s) against whom penalties have been assessed;
8 (2) respondent(s) who have paid a penalty, requested remission, or requested an administrative hearing;
9 (3) respondent(s) who have failed to pay; and
10 (4) cases referred to the Attorney General for collection.

11 (h) Settlements. The Commission hereby delegates to the Director the authority to enter into a settlement of an appeal
12 of a civil penalty at any time prior to the issuance of a decision by the administrative law judge in a contested case
13 under G.S. 150B-23, and shall not require the approval of the Commission. Any settlement agreement proposed
14 subsequent to the issuance of a decision by the administrative law judge in a contested case under G.S. 150B-23 shall
15 be submitted to the Commission for approval.

16
17 *History Note: Authority G.S. 113A-124; 113A-126(d); 113A-124(c)(8);*

18 *Eff. January 24, 1980;*

19 *ARRC Objection August 18, 1988;*

20 *Amended Eff. January 1, 1989; November 1, 1986; November 1, 1984;*

21 *ARRC Objection Lodged Eff. January 18, 1991;*

22 *Amended Eff. September 1, 2019; February 1, 2008; July 1, 1991; June 1, 1991*

23 *Readopted Eff. April 1, 2021.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0410

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection for lack of statutory authority. Staff has not been able to locate authority for the agency, instead of a court, to order restoration of sites to pre-development conditions.

§ 113A-126. Injunctive relief and penalties.

(a) Upon violation of any of the provisions of this Article or of any rule or order adopted under the authority of this Article the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the State upon the relation of the Secretary for injunctive relief to restrain the violation and for a preliminary and permanent mandatory injunction to restore the resources consistent with this Article and rules of the Commission. If the court finds that a violation is threatened or has occurred, the court shall, at a minimum, order the relief necessary to prevent the threatened violation or to abate the violation consistent with this Article and rules of the Commission. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(b) Upon violation of any of the provisions of this Article relating to permits for minor developments issued by a local government, or of any rule or order adopted under the authority of this Article relating to such permits, the designated local official may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the affected local government

upon the relation of the designated local official for injunctive relief to restrain the violation and for a preliminary and permanent mandatory injunction to restore the resources consistent with this Article and rules of the Commission. If the court finds that a violation is threatened or has occurred, the court shall, at a minimum, order the relief necessary to prevent the threatened violation or to abate the violation consistent with this Article and rules of the Commission. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(c) Any person who shall be adjudged to have knowingly or willfully violated any provision of this Article, or any rule or order adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates, any such provision, rule or order after written notice from the Secretary or (in the case of a permit for a minor development issued by a local government) written notice from the designated local official, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

(d) (1) A civil penalty of not more than one thousand dollars (\$1,000) for a minor development violation and ten thousand dollars (\$10,000) for a major development violation may be assessed by the Commission against any person who:

- a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
- b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.
- c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.
- d. Violates a rule of the Commission implementing this Article.

(2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.

(3) The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final decision was served on the violator.

(4) In determining the amount of the civil penalty, the Commission shall consider the following factors:

- a. The degree and extent of harm, including, but not limited to, harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
 - b. The duration and gravity of the violation;
 - c. The effect on water quality, coastal resources, or public trust uses;
 - d. The cost of rectifying the damage;
 - e. The amount of money saved by noncompliance;
 - f. Whether the violation was committed willfully or intentionally;
 - g. The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority; and
 - h. The cost to the State of the enforcement procedures.
- (4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars (\$1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars (\$2,500), whichever is less.
- (5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

1 15A NCAC 07J .0410 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0410 RESTORATION/MITIGATION**

4 Any violation involving development ~~which~~ that is inconsistent with ~~guidelines~~ rules for development within
5 AECs (~~i.e., i.e.~~ wetland fill, improper location of a structure, ~~etc.~~) ~~must~~ shall be corrected by restoring the
6 project site to pre-development conditions upon notice by the Commission or its delegate that restoration is
7 necessary to recover lost resources, or to prevent further resource damage. Said notice ~~will~~ shall describe the
8 extent of restoration necessary and a time for its completion. Failure to act to complete the required restoration
9 may be determined to constitute a separate violation, according to G.S. 113-126(d)(2), subject to the penalties
10 in Rule .0409 of this section. ~~foregoing penalties.~~ Any resources ~~which~~ that cannot be recovered by restoration
11 of the affected site shall be replaced in compliance with the goals of the Commission's mitigation policy
12 described in 15A NCAC 07M .0701. ~~policy.~~

13
14 *History Note: Authority G.S. 113A-126(d); 113A-124(c); ~~113A-124(e)(5); 113A-124(c)(8);~~*
15 *Eff. July 1, 1985;*
16 *Readopted Eff. April 1, 2021.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07K .0207

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objection for ambiguity. It is unclear how the agency determines when alterations are "necessary" and "possible." It is also unclear when a dune's capacity as a protective barrier against flooding and erosion is "significantly" diminished.

1 15A NCAC 07K .0207 is readopted as published in 34:09NCR 763 as follows:

2
3 **15A NCAC 07K .0207 STRUCTURAL ACCESSWAYS OVER FRONTAL DUNES EXEMPTED**

4 (a) The ~~N.C. North Carolina~~ Coastal Resources Commission ~~hereby~~ exempts from the CAMA permit requirement all
5 structural pedestrian accessways over frontal dunes which can be shown to meet the following criteria:

6 (1) The accessway ~~must~~ shall not exceed six feet in width and ~~must~~ shall be for private residential or
7 for public access to an ocean beach. This exemption does not apply to accessways for commercial
8 use or for motor-powered vehicular use.

9 (2) The accessway ~~must~~ shall be constructed so as to make no alterations to the frontal dunes that are
10 not necessary to construct the accessway. This means that wherever possible the accessway ~~must~~
11 shall be constructed over the frontal dune without any alteration of the dunes. In no case shall the
12 dune be altered so as to significantly diminish its capacity as a protective barrier against flooding
13 and erosion. Driving of pilings into the dune shall not be considered alteration of a frontal dune for
14 the purposes of this Rule.

15 (3) The accessway shall conform with any applicable local or ~~state~~ State building code standards.

16 (b) Before beginning any work under this exemption the CAMA local permit officer or Department of ~~Environment,~~
17 ~~Health, and Natural Resources~~ Environmental Quality representative ~~must~~ shall be notified of the proposed activity to
18 allow on-site review of the proposed accessway. Notification can be by telephone, in person, or in writing and must
19 include:

20 (1) name, address, and telephone number of landowner and location of work including county and
21 nearest community; and

22 (2) the dimensions of the proposed structural accessway.

23
24 *History Note: Authority G.S. 113A-103(5) c;*
25 *Eff. November 1, 1984;*
26 *Amended Eff. December 1, 1991; May 1, 1990;*
27 *Readopted Eff. April 1, 2021.*

March 18, 2021

Jennifer Everett
Department of Environmental Quality
Sent via email only to: Jennifer.Everett@ncdenr.gov

Re: Extension of the Period of Review for Rules 15A NCAC 07H, 07J, and 07K

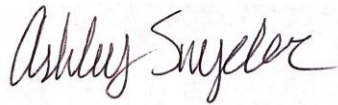
Dear Ms. Everett:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address the requested technical changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Ashley Snyder". The signature is written in a cursive, flowing style.

Ashley Snyder
Commission Counsel

Burgos, Alexander N

Subject: FW: CRC - RRC Request for Technical Changes

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Sent: Thursday, March 11, 2021 10:27 AM

To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>

Subject: Re: CRC - RRC Request for Technical Changes

Hi Ashley,

We are kindly requesting a period of extension of review in order to allow additional time for staff to address your technical change requests.

Thank you. Let us know if you have any questions.

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: All Rules 15A NCAC 07J

DEADLINE FOR RECEIPT: March 12, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

What does CAMA stand for? Is this acronym spelled out in one of your existing rules?

What is the difference between a major permit and a minor permit? I take it you are referring to the definitions in 113A-118, correct?

Throughout these rules, please change "must" to "shall."

Please consider adding 113A-124(c)(8) to your history notes if it is not already listed.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: February 25, 2021

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0403

DEADLINE FOR RECEIPT: March 12, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (b), since you already excepted permits for bulldozing from (a), consider deleting "pursuant to Subparagraph (a) of this Rule." If you need to keep that language, please refer to "Paragraph (a)."

At line 7, what do you mean by "when issued to a property owner?" Is this repetitive of "the date of permit issuance?"

At lines 7-8, consider changing "is entitled to" to "may."

At line 11, please delete the comma after "permit."

Please review lines 11-12. As it is worded, it sounds like .0404 is about renewals, but .0404 governs extensions.

At line 11, if you keep the cross reference to .0404, please insert a "0" before "7J" in the citation.

In (d), how is the oceanfront setback established?

At line 14, what do you mean by "a ruling of exception?" This does not grammatically fit within the sentence.

At line 15, please say "he or she."

Line 17, change "must" to "shall."

At lines 17-18, what is a "major shoreline change?"

At lines 18 and 19, change "will" to "shall."

At line 20, please delete or define "proper."

Ashley Snyder
Commission Counsel
Date submitted to agency: February 25, 2021

Line 22, define "substantial progress."

Does (f) comply with G.S. 113A-121.1 (d)? Even if so, is (f) necessary given G.S. 113A-121.1(d)?

§ 113A-121.1. Administrative review of permit decisions.

(d) A permit challenged under subsection (b) of this section remains in effect unless a stay is issued by the administrative law judge as set forth in G.S. 150B-33 or by a reviewing court as set forth in G.S. 150B-48.

How does (g) comply with G.S. 113A-121.1(c)? The statute requires automatic suspension.

If you keep (g), please remove the capitalization from the beginning of each line in (1)-(4).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: February 25, 2021

1 15A NCAC 07J .0403 is readopted as published in 34:22 NCR 2104 as follows:

2
3 **15A NCAC 07J .0403 DEVELOPMENT PERIOD/COMMENCEMENT/CONTINUATION**

4 (a) New dredge and fill permits and CAMA permits, excepting beach bulldozing when authorized through issuance
5 of a CAMA minor permit, shall expire on December 31 of the third year following the year of permit issuance.

6 (b) Pursuant to Subparagraph (a) of this Rule, a minor permit authorizing beach bulldozing shall expire 30 days from
7 the date of permit issuance when issued to a property owner(s). Following permit expiration, the applicant is entitled
8 to request an extension in accordance with Rule .0404(a) of this Section.

9 (c) Development After Permit Expiration Illegal. Any development done after permit expiration shall be considered
10 unpermitted and shall constitute a violation of G.S. 113A-118 or G.S. 113-229. Any development to be done after
11 permit expiration shall require either a new permit, or renewal of the original permit according to 15A NCAC 7J .0404
12 with the exception of Paragraph (e) of this Rule.

13 (d) Commencement of Development in Ocean Hazard AEC. No development shall begin until the oceanfront setback
14 requirement can be established. When the possessor of a permit or a ruling of exception is ready to begin construction,
15 he shall arrange a meeting with the appropriate permitting authority at the site to determine the oceanfront setback.
16 This setback determination shall replace the one done at the time the permit was processed and approved and
17 construction must begin within a period of 60 days from the date of that meeting. In the case of a major shoreline
18 change within that period a new setback determination will be required before construction begins. Upon completion
19 of the measurement, the permitting authority will issue a written statement to the permittee certifying the same.

20 (e) Continuation of Development in the Ocean Hazard AEC. Once development has begun under proper
21 authorization, development in the Ocean Hazard AEC may continue beyond the authorized development period if, in
22 the opinion of the permitting authority, substantial progress has been made and is continuing according to customary
23 and usual building standards and schedules. In most cases, substantial progress begins with the placement of
24 foundation pilings, and proof of the local building inspector's certification that the installed pilings have passed a floor
25 and foundation inspection.

26 (f) Any permit that has been suspended pursuant to G.S. 113A-121.1 as a result of a contested case petition or by
27 order of superior court for a period longer than six months shall be extended at the applicant's written request for a
28 period equivalent to the period of permit suspension, but not to exceed the development period authorized under
29 Paragraph (a) of this Rule.

30 (g) An applicant may voluntarily suspend development under an active permit that is the subject of judicial review
31 by filing a written notice with the Department once the review has started. An applicant shall obtain an extension of
32 said permit if the permitting authority finds:

- 33 (1) That the applicant notified the permitting authority in writing of the voluntary suspension;
34 (2) The period during which the permit had been subject to judicial review is greater than six months;
35 (3) The applicant filed a written request for an extension of the development period once the judicial
36 review had been completed; and

1 (4) The applicant undertook no development after filing the notice of suspension. The period of permit
2 extension shall be equivalent to the length of the judicial review proceeding, but not to exceed the
3 development period authorized under Paragraph (a) of this Rule.
4

5 *History Note: Authority G.S. 113A-118;*

6 *Eff. March 15, 1978;*

7 *Amended Eff. August 1, 2002; April 1, 1995; July 1, 1989; March 1, 1985; November 1, 1984;*

8 *Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0404

DEADLINE FOR RECEIPT: March 12, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), consider changing "is entitled to" to "may."

In (b)(1), what is considered to be "a reasonable time." Or can the statement simply say "I will complete the work within a reasonable amount of time?"

In (b)(3), please remove the commas surrounding "or."

In (b)(4), please add a comma after "permit."

At line 22, please put "substantial development" in quotations since you are defining the term.

In (c), who are the commenting state agencies? What do you mean by this?

In (c), if you are only referring to North Carolina, please capitalize "State." If you are referring to any state, do not capitalize the word.

In (d), what do you mean by "the maximum extent practical?" What are you requiring here?

In (e), line 36, change "must" to "shall."

In (f), do you mean "may" or "shall?"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: February 25, 2021

1 15A NCAC 07J .0404 is readopted as published in 34:22 NCR 2104 as follows:

2
3 **15A NCAC 07J .0404 DEVELOPMENT PERIOD EXTENSION**

4 (a) For CAMA minor permits authorizing beach bulldozing, the applicant is entitled to request a one-time 30 day
5 permit extension. No additional extensions shall be granted after the 30 day extension has expired. Notwithstanding
6 this Paragraph, the applicant is eligible to apply for another minor permit authorizing beach bulldozing following
7 expiration of the 30 days permit extension.

8 (b) Where no development has been initiated during the development period, the permitting authority shall extend
9 the authorized development period for no more than two years upon receipt of a signed and dated request from the
10 applicant containing the following:

- 11 (1) a statement of the intention of the applicant to complete the work within a reasonable time;
- 12 (2) a statement of the reasons why the project will not be completed before the expiration of the current
13 permit;
- 14 (3) a statement that there has been no change of plans since the issuance of the original permit other
15 than changes that would have the effect of reducing the scope of the project, or, previously approved
16 permit modifications;
- 17 (4) notice of any change in ownership of the property to be developed and a request for transfer of the
18 permit if appropriate; and
- 19 (5) a statement that the project is in compliance with all conditions of the current permit.

20 Where substantial development, either within or outside the AEC, has begun and is continuing on a permitted project,
21 the permitting authority shall grant as many two year extensions as necessary to complete the initial development. For
22 the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permittee can
23 show that development has progressed beyond basic site preparation, such as land clearing and grading, and
24 construction has begun and is continuing on the primary structure or structures authorized under the permit. For
25 purposes of residential subdivision, installation of subdivision roads consistent with an approved subdivision plat shall
26 constitute substantial development. Renewals for maintenance and repairs of previously approved projects may be
27 granted for periods not to exceed 10 years.

28 (c) When an extension request has not met the criteria of Paragraph (b) of this Rule, the Department may circulate
29 the request to the commenting state agencies along with a copy of the original permit application. Commenting
30 agencies will be given three weeks in which to comment on the extension request. Upon the expiration of the
31 commenting period the Department will notify the applicant promptly of its actions on the extension request.

32 (d) Notwithstanding Paragraphs (b) and (c) of this Rule, an extension request may be denied on making findings as
33 required in either G.S. 113A-120 or G.S. 113-229(e). Changes in circumstances or in development standards shall be
34 considered and applied to the maximum extent practical by the permitting authority in making a decision on an
35 extension request.

36 (e) The applicant for a major development extension request must submit, with the request, a check or money order
37 payable to the Department in the sum of one hundred dollars (\$100.00).

1 (f) Modifications to extended permits may be considered pursuant to 15A NCAC 07J .0405.

2
3 *History Note: Authority G.S. 113A-119; 113A-119.1; 113A-124(c)(8);*

4 *Eff. March 15, 1978;*

5 *Amended Eff. August 1, 2002; August 1, 2000; April 1, 1995; March 1, 1991; March 1, 1985;*

6 *November 1, 1984;*

7 *Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0405

DEADLINE FOR RECEIPT: March 12, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a) and (d), please use "his or her."

Throughout this Rule, please change "must" to "shall."

At line 6, delete or define "in detail."

At line 6, please define "minor modifications."

At line 7, please define "major modifications." How does the Department determine which modifications are major? What factors are considered?

Line 7, change "will" to "shall."

In (b), change "which" to "that."

In (b), are such modifications required to be approved in accordance with "Paragraph (a) of this Rule" or "this Rule?"

In (c), change "which" to "that."

At line 15, please change "must" to "shall."

For the lists in (c) and (d), please remove the capitalization from the beginning of each item in the list. Please remove the "and" from the end of every line except the one before the last item in the list. Throughout these lists, also please remove the word "must" and replace it with "shall."

In (c)(1)(A), please replace the semicolon at line 19 with an "and" after "contour."

In (c)(1)(D), define "significant loss."

In (c)(2)(A), do you mean "shall not" instead of "may not?"

Ashley Snyder
Commission Counsel

Date submitted to agency: February 25, 2021

In (c)(3)(A), please replace “would” with “shall” if that was your intent.

In (d)(3), capitalize “State” if you are only referring to North Carolina.

In (d)(3), why is “Land Use Plans” capitalized?

Please fix the spacing at lines 16-17 to make this 1.5 spaced.

At line 16, by “these provisions” do you mean “this Paragraph?”

In (e), please change “must” to “shall.”

In your history note, please delete 113A-124(c)(5) because it has been repealed.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 07J .0405 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0405 PERMIT MODIFICATION**

4 (a) An applicant may modify his permitted major development and/or dredge and fill project only after approval by
5 the Department. In order to modify a permitted project the applicant must make a written request to the Department
6 showing in detail the proposed modifications. Minor modifications may be shown on the existing approved
7 application and plat. Modification requests which, in the opinion of the Department, are major will require a new
8 application. Modification requests are subject to the same processing procedure applicable to original permit
9 applications. A permit need not be circulated to all agencies commenting on the original application if the Commission
10 determines that the modification is so minor that circulation would serve no purpose.

11 (b) Modifications to a permitted project which are imposed or made at the request of the U.S. Army Corps of
12 Engineers or other federal agencies must be approved by the Department under provisions of
13 Paragraph (a) of this Rule dealing with permit modification procedures.

14 (c) Modifications of projects for the benefit of private waterfront property owners which meet the following criteria
15 shall be considered minor modifications and shall not require a new permit application, but must be approved under
16 the provisions of Paragraph (a) of this Rule:

17 (1) for bulkheads:

- 18 (A) Bulkhead must be positioned so as not to extend more than an average distance of two feet
19 waterward of the mean high water contour; in no place shall the bulkhead be more than
20 five feet waterward of the mean high water contour; and
21 (B) All backfill must come from an upland source; and
22 (C) No marsh area may be excavated or filled; and
23 (D) Work must be undertaken because of the necessity to prevent significant loss of private
24 residential property due to erosion; and
25 (E) The bulkhead must be constructed prior to any backfilling activities; and
26 (F) The bulkhead must be constructed so as to prevent seepages of backfill materials through
27 the bulkhead; and
28 (G) The bulkhead may not be constructed in the Ocean Hazard AEC;

29 (2) for piers, docks and boathouses:

- 30 (A) The modification or addition may not be within 150 feet of the edge of a
31 federally-maintained channel; and
32 (B) The structure, as modified, must be 200 feet or less in total length offshore; and
33 (C) The structure, as modified, must not extend past the four feet mean low water contour line
34 (four feet depth at mean low water) of the waterbody; and
35 (D) The project as modified, must not exceed six feet in width; and
36 (E) The modification or addition must not include an enclosed structure; and
37 (F) The project shall continue to be used for private, residential purposes;

1 (3) for boatramps:

2 (A) The project, as modified, would not exceed 10 feet in width and 20 feet offshore; and

3 (B) The project shall continue to be used for private, residential purposes.

4 (d) An applicant may modify his permitted minor development project only after approval by the local permit-letting
5 authority. In order to modify a permitted project the applicant must make a written request to the local minor
6 permit-letting authority showing in detail the proposed modifications. The request shall be reviewed in consultation
7 with the appropriate Division of Coastal Management field consultant and granted if all of the following provisions
8 are met:

9 (1) The size of the project is expanded less than 20 percent of the size of the originally permitted project;

10 and

11 (2) A signed, written statement is obtained from all adjacent riparian property owners indicating they
12 have no objections to the proposed modifications; and

13 (3) The proposed modifications are consistent with all local, state, and federal standards and local Land
14 Use Plans in effect at the time of the modification requests; and

15 (4) The type or nature of development is not changed.

16 Failure to meet these provisions shall necessitate the submission of a new permit application.

17 (e) The applicant for a major permit modification must submit with the request a check or money order payable to
18 the Department in the sum of one hundred dollars (\$100.00) for a minor modification and two hundred fifty dollars
19 (\$250.00) for a major modification.

20
21 *History Note: Authority G.S. 113A-119; 113A-119.1; 113A-124(c)(5); 113-229;*

22 *Eff. March 15, 1978;*

23 *Amended Eff. August 1, 2000; March 1, 1991; August 1, 1986; November 1, 1984;*

24 *Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0406

DEADLINE FOR RECEIPT: March 12, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), should this say "issuance of a permit" instead of "the permit?"

In (a), is this still sent via first class mail?

In (a), what are the other "appropriate means?"

In (b), do you mean "shall not" instead of "may not?"

Please review (b) and (c). Paragraph (b) says anyone holding a permit shall not transfer it, but (c) says a permit may be transferred.

In (c)(4) and (5), define "substantial change."

In (d), please add a "0" before "7J" in 15A NCAC 07J .0600.

In (d), please delete "et. seq." 15A NCAC 07J .0600 refers to the entire Section.

In (e), please change "must" to "shall."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: February 25, 2021

1 15A NCAC 07J .0406 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0406 PERMIT ISSUANCE AND TRANSFER**

4 (a) Upon approval of an application and issuance of the permit, the permit shall be delivered to the applicant, or to
5 any person designated by the applicant to receive the permit, by first class mail or any appropriate means.

6 (b) Anyone holding a permit may not assign, transfer, sell, or otherwise dispose of a permit to a third party.

7 (c) A permit may be transferred to a new party at the discretion of the Director of the Division of Coastal Management
8 upon finding each of the following:

9 (1) a written request from the new owner or developer of the involved properties;

10 (2) a deed, a sale, lease, or option to the proposed new party showing the proposed new party as having
11 the sole legal right to develop the project;

12 (3) that the applicant transferee will use the permit for the purposes for which it was issued;

13 (4) no substantial change in conditions, circumstances, or facts affecting the project;

14 (5) no substantial change or modification of the project as proposed in the original application.

15 (d) A person aggrieved by a decision of the Director as to the transfer of a permit may request a declaratory ruling by
16 the Coastal Resources Commission as per 15A NCAC 7J .0600, et. seq.

17 (e) The applicant for a permit transfer must submit with the request a check or money order payable to the Department
18 in the sum of one hundred dollars (\$100.00).

19
20 *History Note: Authority G.S. 113A-118(c); 113A-119(a); 113A-119.1;*

21 *Eff. March 15, 1978;*

22 *Amended Eff. August 1, 2000; March 1, 1991; March 1, 1990; October 15, 1981;*

23 *Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0407

DEADLINE FOR RECEIPT: March 12, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Does a person wishing to maintain a minor project need approval for maintenance? I take it approval is not required based upon the citation of 113A-103(5)c in your history note, but that is not clear based upon the rule's text.

At line 5, please change "which" to "that."

At line 10, is it necessary to say "at least?" Rules always set minimum requirements.

Just to confirm, is the address in (b) still correct? Are such requests handled via email now?

In (d)(4), use "he or she."

Please delete the "or" at the end of (e)(1). The "or" after (e)(2) applies to the list.

In (e)(2), delete or define "newly."

In (e)(2), add a comma after "facts."

In (e)(2), what do you mean by "newly reached opinions?" Under what circumstances does a new opinion result in suspension or revocation of a permit?

In (e)(2), please change "which" to "that."

In (f), please make this into a full sentence or introductory statement to introduce the list in (1)-(4).

In (1) and (2), how does the Department determine whether there are or are not grounds for revocation or suspension?

In (f)(1), line 4, do you still send notice via "registered letter?"

Ashley Snyder
Commission Counsel

Date submitted to agency: February 25, 2021

In (f)(4), please capitalize "Department."

In your history note, why is only 113A-120(b) cited? Do you rely on (a) for granting permits?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 07J .0407 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0407 PROJECT MAINTENANCE: MAJOR DEVELOPMENT/DREDGE AND FILL**

4 (a) No project previously requiring a major development or dredge and fill permit shall be maintained after the expiration
5 of the authorized development period without approval from the Department. Permits may contain provisions which allow
6 the applicant to maintain the project after its completion. Persons wishing to maintain a project beyond the development
7 period and whose permit contains no maintenance provision shall apply for a maintenance permit. This Rule does not apply
8 to maintenance required by rule or by permit condition.

9 (b) Maintenance Request. Persons desiring to initiate maintenance work on a project pursuant to the maintenance provisions
10 of an existing permit shall file a request at least two weeks prior to the initiation of maintenance work with:

11 Department of Environment and Natural Resources
12 Division of Coastal Management
13 400 Commerce Avenue
14 Morehead City, NC 28557

15 (c) Such requests shall include:

- 16 (1) the name and address of the permittee;
17 (2) the number of the original permit;
18 (3) a description of proposed changes;
19 (4) in the case of a dredge and fill maintenance request, a statement that no dimensional changes are
20 proposed;
21 (5) a copy of the original permit plat with cross-hatching indicating the area to be maintained, any area to be
22 used as spoil, and the estimated amount of material to be removed; and
23 (6) the date of map revision and the applicant's signature shown anew on the original plat.

24 (d) Conditions for Maintenance. All work undertaken pursuant to the maintenance provisions of a permit shall comply with
25 the following conditions:

- 26 (1) Maintenance work under a major development permit shall be limited to activities which are within the
27 exemptions set forth by the Commission.
28 (2) Maintenance under a dredge and fill permit shall be limited to excavation and filling which is necessary
29 to maintain the project dimensions as found in the original permit.
30 (3) Maintenance work is subject to all the conditions included in the original permit.
31 (4) Spoil disposal shall be in the same locations as authorized in the original permit, provided that the person
32 requesting the authority to maintain a project may request a different spoil disposal site if he first serves
33 a copy of the maintenance request on all adjoining landowners.
34 (5) The maintenance work is subject to any conditions determined by the Department to be necessary to
35 protect the public interest with respect to the factors enumerated in G.S. 113A-120 or G.S. 113-229.

36 (e) The Department may suspend or revoke the right to maintain a project in whole or in part upon a finding:

- 37 (1) that the project area has been put to a different use from that indicated in the original permit application;
38 or
39 (2) that there has been a change of conditions in the area, newly found facts or newly reached opinions which
40 would justify denial of a permit; or
41 (3) that there has been a violation of any of the terms or conditions of the original permit.

1 (f) Grant or Denial of Maintenance Request

- 2 (1) Upon receipt of a complete maintenance request the Department shall determine if there are grounds for
3 revocation or suspension of the applicant's right to maintain. If there are grounds for revocation or
4 suspension the applicant shall be notified of the suspension or revocation by registered letter setting forth
5 the findings on which the revocation or suspension is based.
- 6 (2) If the Department determines that the right to maintain should not be revoked or suspended, a letter shall
7 be issued which shall authorize the applicant to perform maintenance work. The letter shall set forth the
8 terms and conditions under which the maintenance work is authorized.
- 9 (3) If the maintenance request discloses changes in the dimensions of the original project, the Department
10 shall notify the applicant that a permit modification or renewal shall be required pursuant to the procedure
11 set out in 15A NCAC 07J .0404 and .0405.
- 12 (4) Appeal of department action under this Section shall be in accordance with 15A NCAC 07J .0302.
- 13

14 *History Note: Authority G.S. 113A-103(5)c; 113A-120(b);*

15 *Eff. March 15, 1978;*

16 *Amended Eff. June 1, 2005; December 1, 1991; May 1, 1990; March 1, 1985; November 1, 1984;*

17 *Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0410

DEADLINE FOR RECEIPT: March 12, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Does the Commission order restoration or does a court order restoration? See 113A-126(b). Where is the Commission's authority to order restoration?

At line 4, please change "which" to "that."

Line 4, do you mean "rules" instead of "guidelines?"

Lines 4-5, please remove the use of parentheses and "etc."

At line 5, please change "must" to "shall."

At line 7, change "will" to "shall."

At line 9, please refer to the rule by citation instead of saying "forgoing." For example, "...subject to the penalties in Rule .0409 of this Section."

Line 10, change "which" to "that."

At lines 10-11, what are "the goals of the Commission's mitigation policy?" What are you requiring here?

In your history note, please delete 113A-124(c)(5) because it has been repealed.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: February 25, 2021

1 15A NCAC 07J .0410 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0410 RESTORATION/MITIGATION**

4 Any violation involving development which is inconsistent with guidelines for development within AECs (i.e.,
5 wetland fill, improper location of a structure, etc.) must be corrected by restoring the project site to
6 pre-development conditions upon notice by the Commission or its delegate that restoration is necessary to
7 recover lost resources, or to prevent further resource damage. Said notice will describe the extent of restoration
8 necessary and a time for its completion. Failure to act to complete the required restoration may be determined
9 to constitute a separate violation, according to G.S. 113-126(d)(2), subject to the foregoing penalties. Any
10 resources which cannot be recovered by restoration of the affected site shall be replaced in compliance with the
11 goals of the Commission's mitigation policy.

12
13 *History Note: Authority G.S. 113A-126(d); 113A-124(c); 113A-124(c)(5);*
14 *Eff. July 1, 1985;*
15 *Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07K .0207

DEADLINE FOR RECEIPT: March 12, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Throughout this Rule, please change "must" to "shall."

In (a), consider deleting "N.C." or spelling out "North Carolina."

In (a), please delete "hereby."

In (a)(2), who determines whether an alteration is "necessary" to construct the accessway? At line 10, who determines where this is "possible?" In other words, who has the final say here?

At line 12, delete or define "significantly."

In (a)(3), please capitalize "State" if you are only referring to North Carolina.

Please add an "and" after (b)(2).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: February 25, 2021

1 15A NCAC 07K .0207 is readopted as published in 34:09NCR 763 as follows:

2
3 **15A NCAC 07K .0207 STRUCTURAL ACCESSWAYS OVER FRONTAL DUNES EXEMPTED**

4 (a) The N.C. Coastal Resources Commission hereby exempts from the CAMA permit requirement all structural
5 pedestrian accessways over frontal dunes which can be shown to meet the following criteria:

6 (1) The accessway must not exceed six feet in width and must be for private residential or for public
7 access to an ocean beach. This exemption does not apply to accessways for commercial use or for
8 motor-powered vehicular use.

9 (2) The accessway must be constructed so as to make no alterations to the frontal dunes that are not
10 necessary to construct the accessway. This means that wherever possible the accessway must be
11 constructed over the frontal dune without any alteration of the dunes. In no case shall the dune be
12 altered so as to significantly diminish its capacity as a protective barrier against flooding and
13 erosion. Driving of pilings into the dune shall not be considered alteration of a frontal dune for the
14 purposes of this Rule.

15 (3) The accessway shall conform with any applicable local or state building code standards.

16 (b) Before beginning any work under this exemption the CAMA local permit officer or Department of Environment,
17 Health, and Natural Resources representative must be notified of the proposed activity to allow on-site review of the
18 proposed accessway. Notification can be by telephone, in person, or in writing and must include:

19 (1) name, address, and telephone number of landowner and location of work including county and
20 nearest community;

21 (2) the dimensions of the proposed structural accessway.

22
23 *History Note: Authority G.S. 113A-103(5) c;*
24 *Eff. November 1, 1984;*
25 *Amended Eff. December 1, 1991; May 1, 1990;*
26 *Readopted Eff. April 1, 2021.*